

Minutes of the Telephonic Meeting of the
Arizona Game and Fish Commission
Monday, July 19, 2004 – 12:00 p.m.
Arizona State Fairgrounds – Wildlife Bldg
17th Avenue & McDowell Road
Phoenix, Arizona

PRESENT – On Site: (Commission)

(Director's Staff)

Commissioner Hays Gilstrap

Director Duane L. Shroufe
Deputy Director Steve K. Ferrell
Assistant. A.G. Jim Odenkirk

PRESENT – Phone

Chairman Sue Chilton

Commissioner Joe Melton

Commissioner Michael M. Golightly

Chairman Chilton called the meeting to order at 12:02 p.m. Roll call was taken and all commissioners were present. Other Department staff present were Dana Yost, Executive Staff Assistant; Harry Seck, Information Systems Branch Manager; Tony Guiles, Legislative Liaison; Chuck Emmert, Audio-Visual Branch Chief; John Shelley, SSIS; Brian Wakeling, WMGM; Mark Naugle, Rules and Risk Manager; and Rory Aikens, Public Information Officer.

Chairman Chilton asked Commissioner Gilstrap to state the Department staff present. Commissioner Gilstrap said that Director Shroufe, Deputy Director Ferrell, Assistant Attorney General Jim Odenkirk, the secretary, and about 125 representatives of the public were present.

Chairman Chilton asked Commissioner Gilstrap take charge of the gavel since he was present on site. As you are aware, we are reconvening per our meeting on Friday, July 16. and in following for a conference call with the judge regarding our motion for relief from injunction at 10:00 a.m. this morning. I would like to ask Assistant Attorney General Odenkirk to give us a report on that.

Mr. Odenkirk gave report. The conference call was scheduled at 10:00 this morning with the judge. The judge did take the matter under advisement and indicated that he would provide an answer by the end of the day. However, the judge's clerk just called and the judge has denied our motion for our requested relief from the injunction. So the injunction stands and we will not be able to proceed with the draw as initially started. At this time I would advise that we go into Executive Session to discuss briefly options that we have and then reconvene in public session.

Commissioner Gilstrap asked if all the Commissioners heard that?

Motion: Chairman Chilton moved and Commissioner Melton seconded THAT WE GO INTO EXECUTIVE SESSION.

Vote: Unanimous

Commissioner Gilstrap announced that we do have water and ice available for the public as they go outside. Obviously, we just got this notification within the last 60 seconds, so we will have to

review exactly what the judge's meaning is and we will try to reconvene in public session just as quickly as possible. Thank you in advance for your patience.

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Meeting recessed at 12:05 p.m.

Meeting reconvened at 12:20 p.m.

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Commissioner Gilstrap reconvened the meeting and thanked the people for their patience and time outdoors. Just so it is clear, in the conference call this morning the judge took under advisement our request for relief and he said he would get back to us later today. As I was calling the meeting to order Mr. Odenkirk received a phone call and the judge made his decision as we were convening. So, if there is any confusion as to exactly what happened, he made his decision about 60 seconds before Jim announced it. So we have been in Executive Session discussing options similar to what was discussed on Friday afternoon before we heard that a phone call was coming in to request a conference call with both the plaintiff and Jim Odenkirk, our A.G. representative this morning, so that brings you up to date. With that, I would like to turn the microphone over to Deputy Director Ferrell, who will review the options that we have been discussing.

- 1. Presenter: Steve K. Ferrell, Deputy Director. Discussion of Option to Process Applications that are Affected by R12-4-114(E) to Comply with the July 13, 2004, U.S. District Court Order in the matter of *Montoya v. Manning*, CIV98-0239 Phoenix RCB.**
The Commission discussed options to process applications that are affected by R12-4-114(E) to comply with the July 13, 2004, U.S. District Court Order in the matter of *Montoya v. Manning*, CIV98-0239 Phoenix RCB. In order to comply with the court's order in those hunts previously limited by R12-4-114(E), the Commission voted to issue a total of 127 additional deer tag and 678 additional elk to those individuals who were not drawn due to the provisions of R12-4-114(E). The Commission also voted to award tags to individuals selected in the first draw and to extend the permit-mailing deadline for tags from the original draw to July 30, 2004, and for the supplemental tags to August 30, 2004.

Deputy Director Ferrell stated as you know, we have had two Executive Sessions one Friday and one today where the Department shared with you two options that would address the court's decision. Option A - additional permits and Option B - a rerun of draw for deer and elk only. Those are the only two options that the Department would choose to have on the table at this point, inasmuch as it is not necessary to rerun the entire draw, including sheep, pronghorn, buffalo and turkeys. That is why we have just the two options that we have been presenting the last two times we've met. Option A is additional permits. I should point out that this is the Department's recommendation. Essentially what we would do to administer this option, is we would maintain the current list of drawn applicants from the draw that occurred last week, and for discussion purposes let's call that List A at this point. In order to accommodate the judge's order, then an additional list would be created that is List B, and that is a list that would be generated by choosing the lowest existing random numbers for the number of applicants that each hunt number can accommodate. So, if there was a hunt number that had 40 tags, List B would simply include those applicants that had the 40 lowest random numbers. Further, in the administration of this option, the Department would then merge those two lists, and results of merging those two lists is the 3-page spreadsheet that was distributed Friday and today. I would ask members of the audience to share as there probably are not enough copies to go around. As a

result of merging those two lists, again, I want to reiterate we maintain the results of the original draw and we add another list that essentially complies with judge's order. When you combine those two lists for deer, of the 11 capped deer hunts, 9 of them get additional tags and of the 60 elk hunts, 42 of them get additional tags. So it is not that all hunts would be affected in this regard. We have shared with the regional offices the results of these lists and we don't believe there is any significant biological impacts created by adding these permits for a one time, one year only. This would not be a sustained recommendation, of course, this is simply a one time change. To further explain the administration of this option, List A applicants could be posted as early as tomorrow along with the sheep, pronghorn, buffalo, and turkey applicants. The Department would need to request an extension for mailing tags to all of those hunters, including all species to July 30. As you know, the hunt book currently states that tags need to be in the mail this Friday the 23rd. We can't make that deadline, but we can do it with another week. That being for List A deer and elk applicants and the sheep, pronghorn, buffalo, and turkey. For List B applicants we could make a special effort to contact these folks, we would have to start doing that preferably by telephone, although we would ask the Commission for some latitude in actually how we accomplish that because we wouldn't have phone numbers for everybody, and we would have to use a variety of means to get the word to those folks. We anticipate being able to make all of those contacts by August 10 and we would request an extension of the mailing of those tags to August 30. The reason August 30 is soon enough is the earliest hunts for List B don't start until September 17. That is the Department's recommendation.

I want to quickly go through Option B, which is a rerun of the draw for deer and elk. It is not possible to just run the capped hunts because of the interconnectedness of capped and noncapped hunts caused by the five choices on a hunt application. Most hunters would have a combination of capped and noncapped hunts on their list of five choices. So you can't just deal with the capped hunts, you would need to rerun the entire draw for deer and elk, which is one of the primary reasons we find this option to be less preferable to Option A. If we were to be directed to rerun the draw for deer and elk, we could post the results as early as July 28, we would request an extension to the mailing deadline of tags out to August 6, with one exception. The first hunts that would be affected by this option start on August 6 and there are 8 tags in those hunts. Those 8 people would have to have their tags issued to them by a special means that would get them out quicker than the others. For others, if we had them in the mail by August 6 would get them to the hunters only a week ahead of the next set of hunts, which starts on August 13, and there are 18 permits for the 13th of August hunts. We might actually have to do some special effort to get those out as well. To recap, posted results on July 28, extend mail deadline to August 6, and we would have to take a special effort to get out the August 6 and 13 tags prior to that deadline.

One other thing I would like to point out is that while most of those additional permits that appear on that 3-page spreadsheet are nonresident hunters, not all of them are nonresident hunters inasmuch as some of those nonresidents who had the lowest random number to earn them a tag in the List B draw, put in with residents. So 10 of those 127 additional deer tags would go to residents and 39 of those additional 678 elk tags would go to residents.

Chairman Chilton requested that Deputy Director Ferrell elaborate on the biological affects of Option A. Deputy Director Ferrell said that when we came up with these numbers at some point last week, right after we learned of the District Court's decision, Mike Senn, Assistant Director of Field Operations, approached each of the regions and asked for their opinion on what the biological impact would be of adding the tags that are stated on these spreadsheets. And, in most cases, there were no concerns raised for a one time basis. In the cases where there were concerns

raised, they were minor in nature and we deemed them not biologically significant. Reasons for that I might add are things like the nature of the unit, type of topography or vegetative type, size of the units, the recent history of number of tags supported in those units in the past, and recent hunt success were some of the criteria used to make the assessment.

Commissioner McLean, again, if Department recommendations were to be followed through by the Commission, this would result in no residents of Arizona being denied a tag, that is no Arizona resident who has previously been selected, and, in fact, we would be adding 49 Arizona residents by use of B List. Is my understanding correct?

Deputy Director Ferrell replied that is correct.

Commissioner McLean: my understanding from the spreadsheet is we would only be increasing the total number of deer permits by 10.4% and the total number of elk permits by 8% Correct?

Deputy Director Ferrell said he was correct.

Commissioner Melton, I might add a little bit to that. I went through the hunt book and the 10% and 8% is kind of misleading. We have, according to my count, 165 total elk hunts in the state, and only 42 hunts are being affected. Of those 42, we only have an 8% increase in those 42. So if you threw all the rest of them in, it would only be a small amount. In the deer we have 108 deer hunts and only 9 of these are affected, and only those are affected by a 10% increase. So we need to keep that in perspective. If we have to reshuffle the deck, like in Option B we are going to reshuffle 165 hunts for elk and 108 hunts for deer.

Deputy Director Ferrell, Commissioner Melton, you are right, those figures of 10% and 8% are only increases in the total permits for capped hunts, so that is not a statewide increase.

Commissioner Gilstrap added that if you took all of them, it would be reduced by a substantial percentage.

Motion: Commissioner Melton moved and Chairman Chilton seconded THAT WE ADOPT OPTION A AS RECOMMENDED BY THE DEPARTMENT.

Commissioner Gilstrap announced that we have some blue slips. I think it would be appropriate to have those people have the opportunity to speak before we make any final decisions. There may be a couple of other speakers also.

Public comment:

Jim Solomon: resides in Glendale, AZ and is representing Outdoors Arizona. Sorry he didn't get a chance to make the meeting last week. I was out of state. He has picked up bits and pieces on what's going on and what the 10% cap is and what it is allowing and not. What I had prepared to say, I am not sure if it should be said now or if it should be redirected at a different time. I guess my concern is that the 10% cap being removed at this time. Those that will be benefiting it, and correct me if I am wrong, but the 10% cap is basically allowing all nonresidents to be able to apply here. Is that correct? There is no 10% cap. Only 10% of them will be allowed to apply for tags. Is that correct?

Commissioner Gilstrap replied that anyone has been able to apply. Mr. Solomon, right, right, but I mean there is a ceiling on that of 10%?

Commissioner Gilstrap replied of issued permits.

Mr. Solomon: and so at this point, it will remove that ceiling? Is that correct?

Commissioner Gilstrap: that is correct as we stand.

Mr. Solomon: those that will gain by this would be guides and outfitters, not only out of state, but guides and outfitters also in this state. Would that be correct? Can I get clarification on that? I am trying to figure out as far as how that is working.

Commissioner Gilstrap: that would be a correct assumption. Assuming that whoever wants to use a guide or outfitter.

Mr. Solomon: as far as solutions, I think the Commission and the Department came up with a tremendous solution. I think this is going to work for the time being. Are we going to proceed with another meeting open for the public that is going to allow for input for changes for next year or for the upcoming years?

Commissioner Gilstrap: we are going to have meetings on a monthly basis after July and I am sure this will be a topic at each of those meetings until April.

Pete Cimellaro: resides in Phoenix, AZ and represents ADA. I have been an outfitter in Arizona for 25 years, actually a guide because we don't have outfitters here as such. It is the first time I have been embarrassed to say that I am one. Let me clear the air. I watched this process for a number of years and what is the issue to me here is what I perceive to be the overwhelming greed on one individual and his group of guides, who wish to take the benefits of hard work of this Agency and the resident sportsmen of this state and turn it into their own personal profit. We can't get away from that fact. That's what this issue is about. I understand the difficult situation for both the Agency and Commission is under. I also am not faulting the judge because he is interpreting the law as he sees it. I have no problem with that. I may disagree with it, but that is simply where we are at. But, what concerns me, and I am here not only as a guide and outfitter and resident hunter, but I am also a board member of the Arizona Deer Association. When I look at the increases, I am first going to say I am not trying to dispute them. I understand the scenario you are under. The Arizona Deer Association has often protested the number of permits that are given out, and, it is always trying to decrease the number of permits. We went through that this year. I look at these and, in particular, our most heavily subscribed hunts, of course, Unit 13 hunts for examples, are being hit hard by this. I am looking at 20-30% increases in these units, not 8 or 10%, but the numbers are simply 20-30%. In 13A I am looking at, excuse me, in 12B West, I am looking at 33%, in 13A I am looking at roughly 28-30%. I haven't put a calculator on these, but they are close. So what this tells me is that our conservative management and our efforts to try to improve these deer herds and meet certain guidelines is being impacted once again by what I call the greed factor. I understand that one time isn't going to sink ship, but it certainly disrupts the plan. You in your wisdom have to do what you need to do to make this work. You must preserve the original draw. That is critical, it has to happen. Increasing the additional permits in order to satisfy the court is reasonable. This seems overall like a plan that probably does that. I am greatly disappointed that it has to be

done. And, once again, I want to put it right back on the shoulders of George Tauman and United States Outfitters. They are at fault for our problems.

Commissioner Gilstrap: oftentimes that I take the opportunity to disagree with your comments, but today, I find none disagreeable.

Leon Ellis: resides in Gilbert, AZ. I just wanted the opportunity to ask when your next meeting will be when you determine what's to happen next year? That those will be published either on your website or by the same e-mail process that I received for this meeting.

Commissioner Gilstrap: the next meeting is August 14 and they are published now through 2005.

Chuck Decker, I have a question about the handout we received. I see these numbers for additional hunts that are going to be issued. I believe you stated in your opening statement that you were going to go back and basically, take 12W for example, there are going to be 14 additional tags, am I right to assume that you are going back and take the next 14 lowest numbers and issue them permits?

Deputy Director Ferrell: yes, that is one way of stating it, but it might not be exactly the way I stated it earlier and the results could be slightly different. Essentially what we have done here is taken 100 people drawn last week for that hunt based on a 10% nonresident cap. What we did then is generate another list in which we took the lowest 100 random numbers regardless of residency. We then compared those two lists. In that second list there are 14 names that weren't on the original list and that is why a total of 114 permits result in the combined list.

Mr. Decker: so of these 14 additional tags, there is the possibility that this could go to 14 more residents. Is that possible?

Deputy Director Ferrell: not likely. The reason that most of names not on List A, that are on List B is because they had a low enough random number to have been there had they not been nonresidents who were drawn after the cap was already fulfilled. So, more than likely most of those people are nonresidents. What I had said earlier, though, was that of those 127 additional permit holders, 10 of them are residents. The reason 10 of those 127 are residents is because the person they drew with was a nonresident. They were in the same envelope so they benefited from that nonresident applicant's low random number.

Mr. Decker: so of the 127, we have 117 nonresident and 10 resident.

Deputy Director Ferrell: for deer, yes.

Mr. Decker: do you by any chance have the numbers for the elk?

Deputy Director Ferrell: there are 39 residents for elk.

Mr. Decker: so we have another 639 that will be nonresident?

Deputy Director Ferrell: that is correct. That is the basis of the court order.

Mr. Decker: so there was a weighted system to give preference to the nonresidents?

Deputy Director Ferrell, no, the weighted system was held before the court order. That was the purpose of the cap on all bull elk statewide and deer north of the river. Nonresident permits were capped at 10%. The court order said that is not constitutional. You have to remove that cap. So the difference here is what happens when you remove the cap and have no weighting, no preference toward residents.

Mr. Decker: how does the nonresident typically draw 3-6% of tags in a normal draw, but seem to have well over 90% in this supplemental draw?

Deputy Director Ferrell: because those are people who had a low enough random number to have been drawn, but were declared ineligible because of the 10% cap. So, when you remove that 10% cap, they have the lowest random numbers.

Mr. Decker: so if we had no cap could the regular draw have been affected in this proportion to nonresidents?

Deputy Director Ferrell: absolutely, for certain hunts. Presently, not all capped hunts actually go to 10% nonresidents, but you can tell by looking at this spreadsheet which ones do.

John Koloszar, resides in Gilbert, AZ and representing Arizona Elk Society. Do we have any form of agreement with the judge so that he will approve of this solution?

Commissioner Gilstrap: I don't think we have anything from the judge, but from our legal staff, this adheres to his decision.

Mr. Koloszar: I understand, but if he doesn't approve of it, what do we do then?

Commissioner Gilstrap: we are not going to ask him to approve it.

Mr. Odenkirk: there is no requirement that our solution be pre-approved by the judge. What the judge has done is issue an order saying that our 10% cap is unconstitutional and issued an injunction against us further enforcing a 10% cap. What we have tried to do here is craft a solution that is reasonable and fair and complies with the court order. Essentially, what the Department has done is simulate a draw that has removed the 10% cap and determined who would have been successful, which nonresidents would have been successful without the 10% cap and award those individuals additional permits. At the same time, we have preserved the tags that had already been assigned to individuals when we ran the first draw. It is our belief that this substantially complies with the court order and is a reasonable solution given the circumstances that we are facing.

Mr. Koleszar: as the Arizona Elk Society would highly recommend that we prepare for next year's draw so this problem doesn't occur again. We recognize that volunteerism will be affected if there is no benefit to an instate hunter who does all the work on the ground for these animals, and then there is no benefit whatsoever and the odds are extremely tilted towards the out of state hunter or the instate hunter. We want to see that there is some form of reward program, it is not necessarily a good term, but we are the ones doing all the work. No one from out of state is coming in and helping with our elk herds, nobody is raising money, nobody is working banquets, and nobody is donating. We are requesting a list of the numbers of the out of state applicants for capped hunts in elk and the total number of applicants for capped hunts by

hunt numbers. We want to do some comparisons to see what the percentages were of out of state hunters versus instate hunters that were drawn. I would like to have that if at all possible on a percentage basis by the hunt unit numbers. We also encourage that the habitat bonus point be put into effect next year and not 2006. And last, but not least, congratulations on avoiding a fiasco by accepting Plan A.

Commissioner Gilstrap asked if there was any further discussion. Hearing none, all those in favor of the recommendation from the Department on Option A as discussed and reviewed say aye.

Vote: Unanimous

Jim Odenkirk would like to place on the record a justification for this emergency meeting. As you know this meeting was set on Friday after we received word that the District Court Judge was going to grant our oral argument scheduled for this morning. Typically, we are required to give 24 hours notice prior to a meeting. We were not able to do so because of the impending oral argument. The notice was just shy of 24 hours. The reason we did not wait until 24 hours was so that we could respond as quickly as possible after the oral argument and allow the Commission to make a decision so the Department could implement that decision.

Commissioner Gilstrap wanted to take the opportunity to thank each and every one of you in this room for your conscientious effort, for your understanding, for your commitment to Arizona wildlife, and the heritage we all love dearly. This has not been a pleasant process, we lost, we don't like to lose, but knowing the dedication that those of you in this room have and your fellow hunters and anglers around the state, we will work through this, we will look forward to having each and every one of you participate in how we can come up with the best or most fair solution with changes and the court order that we have so that those who do good things for Arizona wildlife will have an opportunity to reap the benefits and have the positive experiences that we all love dearly.

Director Shroufe thanked staff, we worked literally 12-24 hours a day since the injunction came down last week. Coming up with these numbers was not easy task to take 280,000 applications and put on one file and rearrange them. I just want to publicly thank that staff. I also want to thank all of you for having interest in this. I know it is very near and dear to your hearts and near and dear to my heart to know whether or not we are going to be drawn this year. So, I think we did best job we possibly could do under the circumstances. Also a lot of folks were here on Friday and they were really frustrated I know with us, for not talking about options. But you have to understand once we talk about options, we are hampering the judge making a decision and our process and we couldn't really do that. So, I want you to know that the staff was working on this, we did have these things ready, we could have gone Friday except during the meeting Friday, we got word that they were going to talk to us about our requested relief from the injunction. I don't think we could have passed that chance up because there was still that chance that we would only have to complete the draw that we had already done without any modifications. That was the best case scenario. In my opinion, that was still the best case because it did what we wanted to do, it did what you folks wanted to do. We are going to come up with alternatives, as we have been working on the last few months in the Commission meetings, to have hopefully in place by next year, so that we have some way of addressing the absence of the 10% cap, because it is gone. There is no rehashing that again, it is gone. I can also tell you that I have been in contact with many other state directors, and for those of you who

got up Friday and talked about what other states do and why can't we do the same thing, unfortunately, I think what you are going to see, is other states doing what we are doing. Because this is going to go through the nation like the flu. There are a lot of states out there that discriminate against nonresidents much more than what Arizona did. I want to thank you all again, and thank the Commission for being available on a minute's notice and making what I think is the best decision that they could make. With that, Madame Chairman I would suggest that you ask and move for adjournment.

Chairman Chilton wanted to put in that we as the Commission appreciate very much the hours and hours of work that you folks have done. You and Steve and all the people who work with you. You came up with something that at least doesn't cause greater harm to the Arizona public and it does comply with the court's mandate. That's pulling a very important rabbit out of the hat. Thank you very much.

Motion: Commissioner Milton moved and Commissioner McLean seconded THAT THE MEETING ADJOURN.

Vote: Unanimous.

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Meeting adjourned at 1:08 p.m.

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Sue Chilton, Chairman

W. Hays Gilstrap, Member

Joe Melton, Member

Michael M. Golightly, Member

William H. McLean, Member

ATTEST:

Duane L. Shroufe
Secretary and Director